

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY)	MDL NO. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)	Subcategory Docket: 06-11337-PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
)	
<i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i>)	Magistrate Judge Marianne B. Bowler
<i>Inc. v. Dey, Inc. et al.</i> , No. 05-11084-PBS;)	
<i>U.S. ex rel. Ven-a-Care of the Florida Keys,</i>)	
<i>Inc., et al. v. Boehringer Ingelheim Corp., et</i>)	
<i>al.</i> , No. 07-10248-PBS)	
)	
)	

THE PARTIES' JOINTLY PROPOSED REQUEST FOR A HEARING DATE

Counsel for the Plaintiffs the United States of America and Relator Ven-A-Care of the Florida Keys, Inc. and Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc. (collectively, "Dey"), Boehringer Ingelheim Corporation ("BIC"), Boehringer Ingelheim Pharmaceuticals, Inc. ("BIPI"), and Boehringer Ingelheim Roxane, Inc. (f/k/a Roxane Laboratories, Inc.) ("Roxane") respectfully request a hearing date for two motions presently fully briefed and before this Court.

By way of background, on December 7, 2009, the parties submitted a joint agenda to the Court. In their joint agenda, the parties requested that the Court hear argument on the United States' Motion to Consolidate the Dey and Roxane Cases (Master Dkt. Nos. 6584-6585, Subcategory Dkt. Nos. 491-92) and BIC and BIPI's Motion for Summary Judgment (Master Dkt. No. 6191, Subcategory Dkt. No. 246) on December 16, 2009. *See* Dkt. No. 593 (The Parties' Jointly Proposed Agenda for Upcoming Hearings (Master Dkt. No. 6745)) These two motions, as reflected below, are fully briefed and ripe for argument:

- ***United States' Motion to Consolidate the Dey and Roxane Cases.*** *See* Master Dkt. Nos. 6584-6585, Subcategory Dkt. Nos. 491-92 (US' Motion); Master Dkt. No. 6629, Subcategory Dkt. No. 518 (Roxane Opposition); Master Dkt. No. 6635, Subcategory

Dkt. No. 524 (Dey Opposition); Master Dkt. No. 6660, Subcategory Dkt. No. 537 (US' Reply); Master Dkt. No. 6767, Subcategory Dkt. No. 604 (Dey Sur-Reply); and Master Dkt. No. 6768, Subcategory Dkt. No. 605 (Roxane Sur-Reply)

- ***BIC and BIPI's Motion for Summary Judgment.*** See Master Dkt. No. 6191, Subcategory Dkt. No. 246 (Motion for SJ); Master Dkt. No. 6192, Subcategory Dkt. No. 247 (BIC/BIPI Memo in Support of Motion for SJ); Master Dkt. No. 6193, Subcategory Dkt. No. 248 (Declaration); Master Dkt. No. 6195, Subcategory Dkt. No. 251 (BIC/BIPI Statement of Facts); Master Dkt. No. 6214, Subcategory Dkt. No. 263 (BIC/BIPI Corrected Statement of Facts); Master Dkt. No. 6410, Subcategory Dkt. No. 390 (US Opposition to BIC/BIPI SJ Motion); Master Dkt. No. 6412-6413, Subcategory Dkt. No. 394, 397 (Fauci Declaration); Master Dkt. No. 6411, Subcategory Dkt. No. 391 (Response to Corrected SOF); Master Dkt. No. 6516, Subcategory Dkt. No. 456 (BIC/BIPI Reply Memo re Motion for SJ); Master Dkt. No. 6517, Subcategory Dkt. No. 457 (BIC & BIPI's Reply to US' Response to BIC & BIPI's SOF re SJ); Master Dkt. No. 6522, Subcategory Dkt. No. 464 (Reale Declaration); and Master Dkt. No. 6575, Subcategory Dkt. No. 483 (US' Sur-Reply to BIC and BIPI's Motion for SJ)

On December 10, 2009, the Courtroom Clerk, Mr. Robert Alba, informed the parties that the Court could not hear argument on December 16, 2009. The parties have conferred and are available on January 5, 11-12, 19-21, 25, 27-28, and February 1-4, 2010. Therefore, the parties respectfully request that the Court set the hearing on the United States' Motion to Consolidate the Dey and Roxane Cases and BIC and BIPI's Motion for Summary Judgment on any of the above dates, provided such dates are convenient to the Court's schedule. The parties propose that the United States' Motion to Consolidate the Dey and Roxane Cases be heard first on the date that the Court selects for argument.

Date: December 17, 2009

/s/ John W. Reale

Helen E. Witt, P.C.
Anne M. Sidrys, P.C.
Eric T. Gortner
John W. Reale (BBO # 654645)
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel for Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc.

/s/ Sarah L. Reid

Paul F. Doyle (BBO # 133460)
Sarah L. Reid
Neil Merkl
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897

Counsel for Defendants Dey, Inc., Dey L.P, Inc. and Dey, L.P.

/s/ James J. Fauci

George B. Henderson, II
Barbara Healy Smith
James J. Fauci
Assistant U.S. Attorneys
United States Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3272

Counsel for the United States of America

CERTIFICATE OF SERVICE

I, John W. Reale, an attorney, hereby certify that I caused a true and correct copy of the foregoing to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 17th day of December 2009.

/s/ John W. Reale